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# DATO' SERI K KUMARAENDRAN & ANOR v. ALBERT ANTONI TASS & ANOR

HIGH COURT MALAYA, GEORGETOWN
KENNETH ST JAMES J
[CIVIL SUIT NO: PA-22NCVC-180-11-2021]
6 OCTOBER 2025

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**Abstract** – *(i) Defamatory words need not specifically name the claimant; it is sufficient if a reasonable person who knows the claimant would conclude that the words referred to him/her; (ii) For the cause of action of libel, with respect to publication to a third party, the element is satisfied when a letter, even if sent only to a firm, is read by the firm's personnel, who are considered the claimant's servants or agents, provided there was no instruction that the letter was to be read only by a particular person.*

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***TORT:*** *Defamation – Libel – Damages – Claim – Correspondence between lawyers acting for respective clients – Words contained in letter – Allegations of misconduct by lawyer – Fraudulent alteration of contract, forgery, tax evasion and coercion – Whether impugned words defamatory – Whether referred to claimants – Whether published to third parties – Whether words/letter published with malice – Whether ingredients of tort of defamation established*

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***TORT:*** *Defamation – Libel – Defences – Correspondence between lawyers acting for respective clients – Words contained in letter – Allegations of misconduct by lawyer – Fraudulent alteration of contract, forgery, tax evasion and coercion – Whether defences of unintentional defamation, qualified privilege and justification available to alleged tortfeasor – Defamation Act 1957, s. 7*

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The plaintiffs were lawyers and partners in their law firm. The plaintiffs' client, Dr N Jeganathan ('DNJ'), had sued the second defendant, who was represented by the first defendant ('Albert'), in a debt recovery suit. In the course of communication, the plaintiffs wrote to Albert: (i) objecting to him acting for the second defendant as he was a potential witness in the suit; and (ii) stating that if he continues to act for the second defendant, the plaintiffs had DNJ's instructions to lodge a complaint against him to the Advocates and Solicitors Disciplinary Board. Albert, in his reply which was copied to the second defendant, stated that his firm would continue to act for the second defendant and added the following: 'We also discovered that the following issues were committed by you and your client: (a) that you have changed the First Schedule of the friendly loan agreement and forged the defendant's signature in said First Schedule exhibited by you in the affidavit. You have also avoided paying stamp duty for the said friendly loan agreement which is invalid; (b) that you prepared a statutory declaration and coerced the defendant to sign the said document, and it is contrary to the

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Stamp Act and cheated the Government of Malaysia of stamp duty … Therefore, you have committed offences and you should discharge yourself from acting for your client as you colluded together to commit these offences' ('impugned words') ('letter'). Alleging the letter's impugned words were defamatory, the plaintiffs commenced the present suit against the defendants. As Albert had passed away, the suit proceeded against the second defendant. The issues that arose for determination were: (i) whether the impugned words, in their natural and ordinary meaning or by innuendo, defamatory of the plaintiffs; (ii) whether the impugned words referred to the plaintiffs; (iii) whether the letter was published with malice; and (iv) whether the defences of unintentional defamation under s. 7 of the Defamation Act 1957 ('Act'), qualified privilege and justification available to the second defendant.

**Held (allowing claim):**

**(1)** To succeed in a suit for defamation, particularly in libel, the plaintiffs must prove that the impugned words: (i) were defamatory; (ii) referred to the plaintiffs; and (iii) were published to persons other than to the plaintiffs, *ie*, to third parties. The plaintiffs had proven the three elements and therefore, the second defendant was liable to the plaintiffs for libel. (paras 7 & 64)

**(2)** The impugned words were defamatory of the plaintiffs. An ordinary, reasonable man would give the following natural and ordinary meaning to the impugned words, that the plaintiffs: (i) tampered with a document, *ie*, a formal contract; (ii) forged the second defendant's signature on the contract; (iii) avoided paying the stamp duty on that contract, rendering it invalid; (iv) prepared a statutory declaration and coerced the second defendant into signing it; and (v) cheated the Government of Malaysia of stamp duty. These imputations would likely (i) cause a reasonable person to think that the plaintiffs were dishonest or dishonourable; (ii) cause a reasonable person to form an adverse opinion of the plaintiffs; (iii) tend to lower the plaintiffs in the opinion of a reasonable person; and (iv) expose the plaintiffs to the contempt of a reasonable person. (paras 33 & 34)

**(3)** It is not a requirement of defamation law that the impugned words must specifically refer to the plaintiffs. It suffices that a reasonable person would understand those words as referring to the plaintiffs. The test was whether the impugned words 'would reasonably lead' persons who know the plaintiffs to conclude that they were the persons referred to by the impugned words. The letter was addressed to the plaintiffs' firm where the plaintiffs were partners. The words, *ie*, expression showed that the impugned words were directed at the plaintiffs, as partners of their firm, and not only to DNJ. (paras 36 & 37)

**(4a)** To satisfy the element of publication, the impugned words must be published to a third person other than the plaintiffs, *ie*, to some person other than the person to whom the impugned words were written. The publication element was made out when the personnel of the plaintiffs read the letter. A letter sent to a law firm, without any instruction that it was to be read only by a particular person but was read by other personnel of the firm, who are the plaintiffs' servant or agent, was found to have been published, satisfying the element of publication to third parties for the cause of action of libel (*Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram*). (paras 40 & 41)

**(4b)** Malice could be attributed to the second defendant based on the following: (i) in the second defendant's reply to the plaintiffs' notice of defamation, the former threatened to counter-sue the latter even though he had produced no evidence to substantiate the allegations asserted in the letter; (ii) the second defendant had knowledge of the impugned words in the letter; and (iii) even in the scenario where, if he initially had no knowledge of the impugned words but later found out about the publication of the impugned words, he could have, but did not, perform remedial steps to disassociate himself from the publication of the impugned words. The fact that he did not take such steps, but instead threatened to counter-sue the plaintiffs, demonstrated the element of malice in his conduct towards the plaintiffs. (paras 42-44)

**(5a)** Section 7 of the Act provides the defence of unintentional defamation to a person who did not intend to publish the allegedly defamatory words and who made an 'offer of amends'. If the aggrieved party does not accept the offer of amends, the person who did not intend to publish the impugned words can plead the defence under s. 7 and set out to prove that he published them innocently and that he made the offer of amends as soon as practicable. The second defendant did not plead the particulars necessary to lead evidence to rely on this defence. There was no evidence of any offer of amends coming from him. The second defendant's conduct ran contrary to the conduct prescribed under s. 7 and, therefore, he could not avail himself of the said defence. (paras 45 & 46)

**(5b)** Qualified privilege required the second defendant to have published the letter, positively knowing the very content which he thought he had a duty to publish, to persons who had the corresponding duty to receive his publication. However, here, the second defendant's position, that he had no knowledge of the impugned words, was incongruous with a defendant who relied on the defence of qualified privilege. (para 50)

**(5c)** The second defendant (i) omitted to plead the particulars of the material facts that permitted him to lead evidence for this defence of justification; and (ii) produced no evidence to demonstrate that the imputations of the impugned words were true and therefore justified. Just by pleading the word 'justification', without any particulars of the material facts that supported the defence of justification and without any evidence of those particulars, did not make the defence of justification available to the second defendant. (paras 51 & 52)

**(6)** Based on (i) the seriousness of the second defendant's allegations against the plaintiff contained in the impugned words of the letter; (ii) how the impugned words were consumed only by the plaintiffs' associates and staff and there was no evidence that, as a result of those allegations, the associates or staff resigned from working for the plaintiffs; and (iii) the principle that general and aggravated damages are to compensate the plaintiffs and not to punish the second defendant, the plaintiffs were awarded the global sum of RM200,000 as general and aggravated damages. (para 65)

**Case(s) referred to:**

*Abu Hassan Hasbullah v. Zukeri Ibrahim [2018] 3 CLJ 726 CA* ***(refd)***

*Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC* ***(refd)***

*Bre Sdn Bhd & Ors v. Tun Datuk Patinggi Hj Abdul Rahman Ya'kub [2005] 2 CLJ 645 CA* ***(refd)***

*Chin Choon v. Chua Jui Meng [2005] 2 CLJ 569 CA* ***(refd)***

*Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA* ***(refd)***

*Clearpath Marketing Sdn Bhd v. Malaysan Banking Bhd [2019] CLJU 111; [2019] 1 LNS 111 CA* ***(refd)***

*Fitters Diversified Bhd & Ors v. Mohd Roslan Mahayudin & Ors [2024] 4 CLJ 657 CA* ***(refd)***

*John v. MGN Ltd [1996] 2 All ER 35* ***(refd)***

*Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors [2001] 2 CLJ 385 CA* ***(refd)***

*Lim Guan Eng v. Ruslan Kassim & Another Appeal [2021] 4 CLJ 155 FC* ***(refd)***

*Mohamed Hafiz Mohamed Nordin v. Eric Paulsen & Another Appeal [2018] CLJU 1731; [2018] 1 LNS 173 CA* ***(refd)***

*Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee [2019] 3 CLJ 729 FC* ***(refd)***

*Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal [2017] CLJU 500; [2017] 1 LNS 500 CA* ***(refd)***

*Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor [1973] CLJU 146; [1973] 1 LNS 146 HC* ***(refd)***

*Syed Nadri Syed Harun & Anor v. Lim Guan Eng & Other Appeals [2019] 2 CLJ 631 CA* ***(refd)***

*T Sivam Tharamalingam v. Public Bank Bhd [2018] 6 CLJ 1 FC* ***(refd)***

*Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram [2000] 5 CLJ 435 HC* ***(refd)***

*Tun Datuk Patinggi Hj Abdul-Rahman Ya'kub v. Bre Sdn Bhd & Ors [1995] CLJU 304; [1995] 1 LNS 304 HC* ***(refd)***

**Legislation referred to:**
Defamation Act 1957, s. 7
Rules of Court 2012, O. 78 r. 3

*For the plaintiffs - Mavin Thillainathan, Azhad Jamaluddin, Ravindejit Kaur & Amitaesh Theva; M/s Lavania & Balan Chambers*
*For the 2nd defendant - Ahilan Natarajah & Muhammad Nazreev Najeeb; M/s N Ahilan & Assocs*

*Reported by Najib Tamby*

## JUDGMENT

**Kenneth St James J:**

### Prelusion

**[1]** The plaintiffs are lawyers. The first plaintiff is Dato' Seri Kumaraendran (DS Kumar). DS Kumar and the second plaintiff (Dev) are partners in their law firm. (When I refer to DS Kumar and Dev together, I will refer to them as the plaintiffs).

**[2]** One of their clients is Dr N Jeganathan (Dr Jega). Dr Jega sued the second defendant (D2) in a debt recovery suit.

**[3]** D2's lawyer was the first defendant (Albert). Albert was the sole proprietor of his law firm. Albert acted for D2 in Dr Jega's suit against D2.

**[4]** In the course of communication between them, Albert issued a letter dated 23 August 2021 to the plaintiffs. The plaintiffs assert that the content (the words) of the letter has defamed them. They sued Albert and D2 for libel (for the words in the letter).

**[5]** Albert has since passed away. The plaintiffs discontinued their suit against Albert. But they continued their suit against D2.

**[6]** Is D2 liable to the plaintiffs for libel? Or does D2 have a defence that absolves him?

### The Law Of Defamation (Pertinent To This Suit)

*The Three Elements To Succeed In Libel*

**[7]** To succeed in a suit for defamation, particularly in libel, the plaintiffs must prove these three trite elements:

(i) the words complained of (the impugned words) are defamatory;

(ii) the impugned words refer to the plaintiffs;

(iii) the impugned words were published to persons other than to the plaintiffs, *ie*, to third parties.

– *Fitters Diversified Bhd & Ors v. Mohd Roslan Mahayudin & Ors* [2024] 4 CLJ 657; [2024] 3 MLJ 937; [2024] 5 MLRA 291, at MLJ p. 956, paras. [32], [33].

**[8]** Concerning the first element – the impugned words are defamatory the case law authorities have propounded that the impugned words are defamatory when the impugned words: A

(i) in their natural or ordinary meaning "impute to the (plaintiffs) any dishonourable or discreditable conduct or motives or a lack of integrity": see *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371; [1999] 1 AMR 753; [1998] 2 MLRA 287, at MLJ p. 374; B

(ii) tend to "excite against the (plaintiffs) the adverse opinion of others", or "tend to lower the (plaintiffs) in the estimation of right-thinking members of society": see *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] CLJU 146; [1973] 1 LNS 146; [1973] 2 MLJ 56; [1973] 1 MLRH 153, at MLJ p. 58; and C

(iii) were "calculated to expose the (plaintiffs) to hatred, ridicule or contempt in the mind of a reasonable man": see *Bre Sdn Bhd & Ors v. Tun Datuk Patinggi Hj Abdul Rahman Ya'kub* [2005] 2 CLJ 645; [2005] 3 MLJ 485; [2005] 3 AMR 1 [2005]; [2005] 1 MLRA 289, at MLJ p. 490, para. [10]. D

**[9]** Also, when I decide on whether the meaning of the impugned words is defamatory, I must look at the natural and ordinary meaning of the impugned words "to ordinary reasonable persons using their general knowledge and common sense". The meaning is not confined to "the strict literal meaning". Instead, the meaning can be drawn by ordinary reasonable persons by "reference or implication": see *Mohamed Hafiz Mohamed Nordin v. Eric Paulsen & Another Appeal* [2018] CLJU 1731; [2018] 1 LNS 173; [2019] 1 MLJ 580; [2018] 8 AMR 558; [2019] 1 MLRA 125 at MLJ p. 587, citing *Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] CLJU 304; [1995] 1 LNS 304; [1996] 1 MLJ 393, at p. 402 (per Justice Richard Malanjum (later CJ)). E F

*The Importance Of Pleading Particulars In A Defamation Case* G

**[10]** Order 78 r. 3 of the Rules of Court 2012 requires the parties to plead particulars in a defamation suit. D2 is obligated to plead the specific defence and, more importantly, the particulars of the defence. Not pleading the particulars of a defence is fatal. This means that D2 must particularise the material facts that support each of his pleaded defences. Put differently, the plaintiffs must not be left to figure out what facts, and how those facts support D2's defences – *Abu Hassan Hasbullah v. Zukeri Ibrahim* [2018] 3 CLJ 726; [2018] 6 MLJ 396; [2017] AMEJ 1321; [2017] MLRAU 453, at paras. [56], [64], [65]. H I

A **Pertinent Pleaded Facts**

**[11]** These are the pertinent pleaded facts that are not in dispute.

**[12]** DS Kumar was called to the Malaysian Bar in 1970. Dev was called to the Malaysian Bar in 2001. When this suit was filed in 2021, DS Kumar had been in practice for 51 years, and Dev had been in practice for 20 years.

**[13]** In the course of the communication between the plaintiffs and Albert in Dr Jega's suit against D2 (*vide* Georgetown Sessions Court Summons No. PA-B52-4-03/2021), the plaintiffs wrote a letter dated 17 August 2021 to Albert. In this letter dated 17 August 2021:

(i) the plaintiffs informed Albert that, as he (Albert) was a potential witness in the suit, the plaintiffs objected to Albert acting for D2 in the suit; and

(ii) if Albert continues to act for D2, the plaintiffs have Dr Jega's instructions to lodge a complaint against Albert to the Advocates and Solicitors Disciplinary Board.

**[14]** In reply to the plaintiffs' letter dated 17 August 2021, Albert (under his firm's letterhead) issued the 23 August 2021 letter to the plaintiffs. The following is the *verbatim* content of the 23 August 2021 letter:

(i) "we refer to the above matter (Dr Jega's suit against D2) and letter dated 17 August 2021";

(ii) "kindly be informed that our firm will continue to act as counsel for the defendant (D2)";

(iii) "we also discovered that the following issues were committed by you and your client:

(a) that *you have changed the First Schedule of the friendly loan agreement* and *forged the defendant's signature in said first schedule* exhibited by you in the affidavit. *You have also avoided paying stamp duty for the said friendly loan agreement* which is invalid; and

(b) that *you prepared a statutory declaration and coerced the defendant to sign the said document* and *it is contrary to the Stamp Act* and *cheated the Government of Malaysia of Stamp Duty*;

(iv) "therefore *you have committed offences* and you should discharge yourself from acting for your client as you colluded together to commit these offences".

(emphasis added)

**[15]** These allegedly libellous statements in the 23 August 2021 letter are the impugned words.

**[16]** The 23 August 2021 letter was CC'd (copied) to Albert's "clients", namely D2.

**[17]** Later, the plaintiffs' solicitors issued a letter dated 10 September 2021 (called a notice of defamation) to Albert and D2, asserting that the content of the 23 August 2021 letter had defamed the plaintiffs. The plaintiffs demanded:

(i) that Albert and D2 apologise for the impugned words in the 23 August 2021 letter;

(ii) that Albert and D2 give the plaintiffs an undertaking not to further publish the 23 August 2021 letter, and not to publish words about the plaintiffs which carry similar meanings, in any other form; and

(iii) that Albert and D2 pay the plaintiffs RM1 million as compensation for the damage to the plaintiffs' "image, goodwill and reputation".

**[18]** Albert and D2 replied to the plaintiffs' notice of defamation. Albert (under his firm's letterhead) issued a letter dated 18 October 2021 (reply letter) to the plaintiffs' solicitors. In this reply letter, it is stated that:

(i) Albert (his firm) acted for D2;

(ii) the 23 August 2021 letter was not meant to be private and confidential;

(iii) the 23 August 2021 letter was served by hand and duly acknowledged by the plaintiffs' firm;

(iv) the assertions made in the 23 August 2021 letter (changing the First Schedule of the friendly loan agreement; forging D2's signature in the friendly loan agreement; avoiding paying stamp duty; preparing a statutory declaration in D2's name; coercing D2 into affirming the statutory declaration; cheating the Government of Malaysia of stamp duty; colluding with their client: Dr Jega, to commit the various offences) – were already averred to in D2's affidavits filed in Dr Jega's suit against D2;

(v) the 23 August 2021 letter was not published, but was only served on the plaintiffs' firm;

(vi) although the 23 August 2021 letter stated that the letter was copied to D2, it was not sent to D2;

(vii) the contents of the plaintiffs' notice of defamation were denied;

(viii) D2 is a respected businessman, who has businesses in Malaysia and abroad. By issuing the plaintiffs' notice of defamation, the plaintiffs were attempting to tarnish D2's image in the business community. As a result, D2 suffered "mental distress and discomfort"; and

(ix) Albert and D2 demanded that the plaintiffs withdraw their notice of defamation, and tender a written apology to Albert and D2. If the plaintiffs do not do so, Albert and D2 will "counterclaim" against the plaintiffs and their "partners and current associates for damages jointly and severally".

**D2's Pleaded Defences**

**[19]** These are D2's pleaded defences:

(i) the 23 August 2021 letter was not intended to refer to the plaintiffs (para. 18 of the amended defence);

(ii) the 23 August 2021 letter was addressed to the firm of Kumar & Co, not specifically to the plaintiffs (para. 19 of the amended defence);

(iii) the 23 August 2021 letter was not published outside of the firm of Kumar & Co (para. 21 of the amended defence);

(iv) the 23 August 2021 letter was actually directed to Dr Jega, who was represented by Kumar & Co (para. 22 of the amended defence);

(v) the 23 August 2021 letter did not specifically refer to the plaintiffs (para. 23 of the amended defence); and

(vi) D2 relies on the defence provided in s. 7 of the Defamation Act 1957, and the defences of fair comment, absolute privilege, qualified privilege and justification (para. 29 of the amended defence).

**The Issues To Be Tried**

**[20]** These are the parties' agreed issues to be tried:

(i) were the impugned words in the 23 August 2021 letter, in their natural and ordinary meaning or by innuendo, defamatory of the plaintiffs?

(ii) was the 23 August 2021 letter published with malice?

(iii) can D2 rely on the defence of unintentional defamation under s. 7 of the Defamation Act 1957?

(iv) can D2 rely on the defences of fair comment, absolute privilege and justification?

**[21]** I note that:

(i) although the defence of qualified privilege was pleaded, it was not included in the agreed issues to be tried;

(ii) the defence of not having knowledge about the impugned words was also not included in the agreed issues to be tried; and

(iii) the defence of not giving instructions to Albert to write the impugned words was similarly not included in the agreed issues to be tried.

**[22]** Also, in the midst of post-trial oral submissions, D2 abandons the defence of absolute privilege. And so, I do not need to consider this defence.

**D2's Arguments That Are Not Part Of The Agreed Issues To Be Tried**

**[23]** Preliminarily, I would like to deal with and determine D2's arguments that are not included in the agreed issues to be tried. The first argument that is not included in the agreed issues to be tried is the argument that he had no knowledge of the impugned words of the 23 August 2021 letter. The second argument that is not included in the agreed issues to be tried is that he did not give instructions to Albert to write the 23 August 2021 letter.

**[24]** I find that neither of these arguments helps D2. D2 will not succeed on these two arguments. Firstly, D2 did not plead, as a defence, that he had no knowledge of the impugned words in the 23 August 2021 letter. He also did not plead, as a defence, that he did not instruct Albert to write the 23 August 2021 letter. It is fundamental and trite that evidence produced that is outside of the pleadings is inadmissible – *Clearpath Marketing Sdn Bhd v. Malaysan Banking Bhd* [2019] CLJU 111; [2019] 1 LNS 111; [2019] 4 MLRA 461; [2019] MLJU 100.

**[25]** Secondly, the allegations made in the 23 August 2021 letter – that the plaintiffs changed the First Schedule of the friendly loan agreement; that the plaintiffs forged D2's signature in the friendly loan agreement; that the plaintiffs avoided paying stamp duty on the friendly loan agreement; that the plaintiffs prepared a statutory declaration and coerced D2 to sign it; that the plaintiffs cheated the Government of Malaysia of stamp duty – were averred to by D2 in his affidavit in reply dated 13 August 2021 (which was filed in Dr Jega's suit against D2), as well as in D2's defence (also filed in Dr Jega's suit against D2).

**[26]** D2 can hardly swear on oath that he did not know about the content of the 23 August 2021 letter, or that he did not give instructions to Albert to write the 23 August 2021 letter.

**[27]** Thirdly, if D2 had no knowledge of the impugned words of the 23 August 2021 letter (which is the subject matter of this libel suit), or if D2 did not instruct Albert to write the impugned words in the 23 August 2021 letter – I find it incredible that D2 did not plead these two material facts in his amended defence (which he went to trial with).

**[28]** Also, after his new solicitors took over the conduct of his case in this suit, D2 did not ask for leave to amend his original defence to assert these two material facts. Instead, D2 asked for leave to amend his defence to include qualified privilege as a defence.

**[29]** I am of the view that D2 has been less than forthright when he argues that he had no knowledge of the impugned words in the 23 August 2021 letter, and that he did not instruct Albert to write the 23 August 2021 letter.

**[30]** Fourthly, I am guided and bound by the principle that a client is liable for the acts and omissions of his solicitor because of the principal-and-agent relationship between them – *T Sivam Tharamalingam v. Public Bank Bhd* [2018] 6 CLJ 1; [2018] 5 MLJ 711; [2018] 4 AMR 321; [2018] 4 MLRA 583; at para. [61].

**[31]** A solicitor-client relationship is a principal-agent relationship. The solicitor is the client's agent. Here, Albert was D2's agent. The 23 August 2021 letter was written by Albert, as D2's agent. The impugned words in the 23 August 2021 letter are attributable to D2. Thus, liability for libel by the impugned words can be ascribed to D2.

**My Findings On The Three Elements For Libel And The Agreed Issues To Be Tried**

*Were The Impugned Words Defamatory Of The Plaintiffs?*

**[32]** Considering the natural and ordinary meaning of the impugned words in the 23 August 2021 letter, objectively, *ie*, like an ordinary reasonable man would – I find that the impugned words were defamatory of the plaintiffs.

**[33]** An ordinary, reasonable man would give the following natural and ordinary meaning to the impugned words:

(i) the plaintiffs tampered with a document (a formal contract);

(ii) the plaintiffs forged D2's signature on that contract;

(iii) the plaintiffs avoided paying the stamp duty on that contract, rendering it invalid;

(iv) the plaintiffs prepared a statutory declaration and coerced D2 into signing it; and

(v) the plaintiffs cheated the Government of Malaysia of stamp duty.

**[34]** I find that these imputations (meanings) would likely cause a reasonable person to think that the plaintiffs are dishonest or dishonourable. These imputations would likely cause a reasonable person to form an adverse opinion of the plaintiffs. These imputations would tend to lower the plaintiffs in the opinion of a reasonable person. And these imputations would likely expose the plaintiffs to the contempt of a reasonable person.

*Did The Impugned Words Refer To The Plaintiffs?*

**[35]** D2 pleads and argues that the impugned words do not refer to the plaintiffs; that the 23 August 2021 letter was addressed only to the firm (Kumar & Co); that the 23 August 2021 letter was actually directed at Dr Jega; and that the 23 August 2021 letter did not specifically refer to the plaintiffs.

**[36]** I find these arguments insupportable. Firstly, it is not a requirement of defamation law that the impugned words must specifically refer to the plaintiffs. It suffices that a reasonable person would understand those words as referring to the plaintiffs. The test is whether the impugned words "would reasonably lead" persons who know the plaintiffs to conclude that they were the persons referred to by the impugned words – *Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee* [2019] 3 CLJ 729; [2019] 3 MLJ 720; [2019] 2 AMR 525; [2019] 2 MLRA 345; at para. [35].

**[37]** The 23 August 2021 letter was addressed to the plaintiffs' firm (Kumar & Co). The plaintiffs were the partners of the firm. The following words (expressions) show that the impugned words were directed at the plaintiffs (as partners of their firm), and not only to Dr Jega (as argued):

(i) "... the following issues were committed by you (*ie*, the plaintiffs) and your client:";

(ii) "…you have changed the First Schedule of the friendly loan agreement and forged the defendants' signature ...";

(iii) "you have also avoided paying stamp duty ...";

(iv) "... you prepared a statutory declaration and coerced the defendant to sign…and cheated the Government of Malaysia ..."; and

(v) "therefore you have committed offences and you should discharge yourself from acting for your client ...".

**[38]** It is more likely than not that a reasonable person would understand that the words "you" and "your" in the 23 August 2021 letter refer to the plaintiffs.

*Was The 23 August 2021 Letter Published With Malice?*

**[39]** D2 argues that there was no publication of the 23 August 2021 letter because it was sent only to the plaintiffs' firm. I find this argument untenable.

**[40]** Case law authority guides me that to satisfy the element of publication, the impugned words must be published "to a third person other than" the plaintiffs, *ie*, "to some person other than the person to whom (the impugned words) were written" – *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; [1989] 1 MLJ 315; [1988] 1 MLRH 653.

**[41]** Further, the publication element is made out where the personnel of the plaintiffs read the 23 August 2021 letter. A letter sent to a law firm, without any instruction that it was to be read only by a particular person, but was read by other personnel of the firm (who the plaintiffs' servant or agent are), was found to have been published – satisfying the element of publication to third parties for the cause of action for libel – *Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram* [2000] 5 CLJ 435; [2000] 5 MLJ 465; [2000] 2 AMR 1278; [2000] 2 MLRH 33.

**[42]** As for malice, I find, on the balance of probabilities, that malice can be attributed to D2. Firstly, in D2's reply (letter dated 18 October 2021) to the plaintiffs' notice of defamation, D2 threatened to counter-sue the plaintiffs, even though D2 had produced no evidence to substantiate the allegations asserted in the 23 August 2021 letter.

**[43]** Secondly, I have found (in the paragraphs above) that D2 had knowledge of the impugned words in the 23 August 2021 letter.

**[44]** Thirdly, even in the scenario where if he initially had no knowledge of the impugned words, but later found out about the publication of the impugned words – he could have, but he did not, perform remedial steps to disassociate himself from the publication of the impugned words. The fact that he did not take such steps, but instead threatened to counter-sue the plaintiffs, demonstrates the element of malice in his conduct towards the plaintiffs.

*The Section 7 Defence*

**[45]** Section 7 of the Defamation Act 1957 provides the defence of unintentional defamation to a person who did not intend to publish the allegedly defamatory words, and who made an "offer of amends". If the aggrieved party does not accept the offer of amends, the person who did not intend to publish the impugned words can plead this s. 7 defence and set out to prove that he published the allegedly defamatory words innocently, and that he made the offer of amends as soon as practicable. The pertinent portions of s. 7 are set out below for reference:

> *Section 7. Unintentional defamation*
>
> (1) *A person who has published words alleged to be defamatory* of another person *may, if he claims that the words were published by him innocently* in relation to that other person, *make an offer of amends* under this section; and in any such case:
>
> (a) *if the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander shall be taken or continued* by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);
>
> (b) *if the offer is not accepted by the party aggrieved, then*, except as otherwise provided by this section, *it shall be a defence*, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, *to prove that the words complained of* were published by the defendant or *were published by the defendant innocently* in relation to the plaintiff *and that the offer was made as soon as practicable after the defendant received notice that they were* or might be *defamatory of the plaintiff, and has not been withdrawn*.

(2) *An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon* by the person making it *to show that the words in question were published* by him *innocently* in relation to the party aggrieved; and for the purposes of a defence under paragraph 7(1)(b) no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(emphasis added)

**[46]** I find that D2 cannot avail himself of this s. 7 defence. He did not plead the particulars necessary to lead evidence to rely on this defence. In any event, there was no evidence of any offer of amends coming from D2. Instead, D2 denied that he was liable for defamation because of the 23 August 2021 letter, and threatened to counter-sue the plaintiffs arising from the relevant facts. D2's conduct runs contrary to the conduct that is prescribed under s. 7 for D2 to avail himself of this defence.

*Qualified Privilege*

**[47]** D2 argues that the 23 August 2021 letter was a communication between solicitors in the course of legal proceedings. He submits that he can therefore rely on the defence of qualified privilege. I find this argument misconceived.

**[48]** Firstly, the defence of qualified privilege can only be raised if the impugned words were published on an occasion of privilege. An occasion of privilege is when D2 had the duty (social, moral or legal) to publish the impugned words – to persons who had the corresponding interest to receive (to be informed about) the impugned words.

**[49]** In other words, if D2 asserts that he did not publish the impugned words, as he does here (he had no knowledge of the impugned words, and he did not instruct Albert to publish the impugned words) – he can hardly rely on the defence of qualified privilege for the impugned words. To rely on the defence of qualified privilege, he must necessarily admit that he published the impugned words or that he instructed Albert to publish them (and that they were published on an occasion of privilege).

**[50]** Put differently, D2 alleges that he had no knowledge of the impugned words. If he alleges that he had no knowledge of the impugned words, he cannot rely on the defence of qualified privilege. Qualified privilege requires D2 to have published the 23 August 2021 letter, positively knowing the very content which he thought he had a duty to publish to persons who had the corresponding duty to receive his publication. But here, D2's position that he had no knowledge of the impugned words is incongruous with a defendant who relies on the defence of qualified privilege.

*Justification*

**[51]** As for the defence of justification, D2 omitted to plead the particulars of the material facts that permit him to lead evidence for this defence of justification.

**[52]** Anyhow, D2 has produced no evidence to demonstrate that the imputations of the impugned words (the allegations made against the plaintiffs) were true and therefore justified. Just by pleading the word "justification", but without any particulars of the material facts that support the defence of justification, and without any evidence of those particulars – does not make the defence of justification available to D2.

**General And Aggravated Damages**

**[53]** The remedy for the tort of defamation (here: libel) is damages. In assessing the quantum of damages, I am to follow the legal principles that include the following principles.

**[54]** One – damages for defamation are "at large". There is "no accepted scale or formula". Damages are awarded "on the merits of each case based on the accepted guidelines" – *Lim Guan Eng v. Ruslan Kassim & Another Appeal* [2021] 4 CLJ 155; [2021] 2 MLJ 514; [2021] 3 MLRA 207; [2021] AMEJ 0190; at para. [185].

**[55]** Two – when assessing the quantum of damages, the factors that I should consider include:

(i) the nature and gravity of the libel. These are the "most important factors" to consider. The "more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be" – the Federal Court in *Lim Guan Eng v. Ruslan Kassim* (*supra*), at para. [185], citing *John v. MGN Ltd* [1996] 2 All ER 35;

(ii) the extent and the mode of the publication. "A libel published to millions has a greater potential to cause damage than a libel published to a few" – para. [186] in *Lim Guan Eng v. Ruslan Kassim* (*supra*);

(iii) the conduct of the plaintiff, his credibility, his position and standing, and "the subjective impact of the libel has had on him" – para. [187] in *Lim Guan Eng v. Ruslan Kassim* (*supra*); and

(iv) the conduct of the defendant "from the time the libel was published down to the verdict"; and whether the defendant refused to retract the impugned words or to apologise for them. For example, if the defendant asserts the truth of the libel (*ie*, pleads the defence of justification) and

refuses to retract or apologise for the libel – higher damages may be awarded. Conversely, if the defendant admits that the libel is not true and "expresses regret" for it – damages "may be reduced"– paras. [187] and [188] in *Lim Guan Eng v. Ruslan Kassim* (*supra*).

**[56]** Three – aggravated damages are "not confined to cases involving the defendant's high handedness or oppressive actions". Instead, "a variety of circumstances" can justify the award of aggravated damages. A further elaboration of the application of aggravated damages was cited by the Federal Court, like so-aggravated damages are "compensatory damages", awarded as "additional compensation", where there has been "intangible injury to the interest or personality of the plaintiff", and this injury was "caused or exacerbated by the exceptional conduct of the defendant" – the Federal Court in *Lim Guan Eng v. Ruslan Kassim* (*supra*), at para. [191], citing *Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal* [2017] CLJU 500; [2017] 1 LNS 500; [2018] 1 MLJ 784; [2018] 4 AMR 745; [2018] 3 MLRA 488.

**[57]** Four – a "global award of damages for compensatory and aggravated damages" should be made. In other words, an amount for aggravated damages should not be separately awarded. If aggravated damages are to be given, an award "of a percentage increase from a normal compensatory award" is the prescribed approach in deciding on a global amount – para. [194] of *Lim Guan Eng v. Ruslan Kassim* (*supra*). The Federal Court held that it would be "unrealistic to allocate different amounts for injury to reputation, for vindication, for hurt feelings and for aggravation", citing the Court of Appeal judgment in *Chin Choon v. Chua Jui Meng* [2005] 2 CLJ 569; [2005] 3 MLJ 494; [2005] 3 AMR 189; [2004] 2 MLRA 636.

**[58]** Five – the quantum of an award of damages is to compensate the plaintiff, and not so much to punish the defendant. On the one hand, the amount of damages is to compensate the plaintiff for the injury to his good name and reputation, and the hurt done to his feelings. On the other hand, the amount of damages should not be excessive.

**[59]** Six – exemplary damages are punitive and not compensatory. Exemplary damages can be awarded, but only in "rare and exceptional circumstances". Exemplary damages can only be awarded if the defendant committed the libel "with the motive of material gain", or to be "better off financially", or to obtain an "economic advantage" or "profit" – para. [189] of *Lim Guan Eng v. Ruslan Kassim* (*supra*).

**[60]** I will not award exemplary damages because the plaintiffs have not proven that D2 got some form of financial or material gain from the publication of the 23 August 2021 letter. In other words, the plaintiffs have not proven that D2 did it to get some monetary or financial advantage out of it.

**[61]** I find, however, that aggravated damages should be awarded against D2 because:

(i) D2 could have, at the earliest opportunity, informed the plaintiffs that he had no knowledge of the 23 August 2021 letter or that the letter was prepared and issued without or against his instructions. But he did not do that at all;

(ii) in the 18 October 2021 reply letter, in a countermove, D2 threatened to sue the plaintiffs for defamation and asked for an apology. The threat to counter-sue discloses the extent of D2's conduct that warrants ordering D2 to pay aggravated damages; and

(iii) D2 did not make any offer, all the way through from pleadings to the trial, to tender an apology. An apology could have gone to some extent to alleviate the plaintiffs' hurt feelings.

**[62]** The case law authority of *Thiruchelvasegaram* (*supra*), cited above, guides me. The plaintiff there was a lawyer by profession. There were two defamation suits, tried together. The defendant there was held liable for three defamatory allegations in one suit and for two defamatory allegations in the other suit. The High Court awarded RM1 million and RM2 million as damages in the respective suits.

**[63]** But I am mindful that our defamation law has done away with the award of damages in the millions of Ringgit, or in the range of multiple millions of Ringgit – (i) *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385; [2001] 2 AMR 2320; [2001] 1 MLRA 125; (ii) *Syed Nadri Syed Harun & Anor v. Lim Guan Eng & Other Appeals* [2019] 2 CLJ 631; [2019] 4 MLJ 259; [2019] 2 MLRA 387; [2018] MLJU 2101.

**Conclusion**

**[64]** For these reasons, I find that the plaintiffs have proven the three requirements to succeed in a libel suit. I find that D2's defences are untenable. I find that D2 is liable to the plaintiffs for libel.

**[65]** Considering the facts of this suit and the factors that surround this suit, which include:

(i) the seriousness of D2's allegations against the plaintiff contained in the impugned words of the 23 August 2021 letter;

(ii) how the impugned words were consumed only by the plaintiffs' associates and staff, and there was no evidence that, as a result of the allegations contained in the letter, the associates or staff resigned from working for the plaintiffs; and

(iii) the principle that general and aggravated damages are to compensate the plaintiffs and not to punish D2.

I award the plaintiffs (together) the global sum of RM200K as general and aggravated damages.

**[66]** I also award costs of RM30K to be paid by D2 to the plaintiffs. Costs are subject to the allocator.

**[67]** I grant prayers 33.1 (declaration), 33.2 (injunction), 33.3 (apology), 33.4 (damages) in the sum of RM200K, 33.7 (interest) and 33.8 (costs of RM30K, subject to the allocator).